

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:12-cv-01282-JLR

DECLARATION OF FE LOPEZ IN
SUPPORT OF COMMUNITY POLICE
COMMISSION'S RESPONSE TO
COURT'S ORDER TO SHOW CAUSE

DECLARATION OF FE LOPEZ
(No. 2:12-cv-01282-JLR)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 I, Fé Lopez, hereby declare:

2 I have personal knowledge of the facts stated below and am competent to testify
3 regarding the same.

4 1. I am the Executive Director of the Community Police Commission (“CPC”),
5 *amicus curiae* in this matter.

6 2. Attached as **Exhibit A** is a true and correct copy of an email kept in CPC records,
7 which was sent by then-U.S. Attorney Jenny Durkan on April 4, 2014 to the then-co-chairs of the
8 CPC, as well as other recipients. The email is titled “Re: OPA Auditor Special Review of SPD
9 Disciplinary Practices—April 3, 2014.”

10 3. Attached as **Exhibit B** are excerpts from documents that the CPC received in late
11 2018 from the Mayor’s Office in response to requests for Labor Relations Policy Committee
12 (“LRPC”) communications pertaining to the Seattle Police Officers Guild (“SPOG”) contract.
13 The excerpts include status reports on the SPOG collective bargaining agreement, with portions
14 related to secondary employment issues highlighted in (dark) yellow. In my view, these status
15 reports indicate that the Accountability Ordinance provisions related to secondary employment
16 would go into effect and only be subject to re-opening to bargain economic effects.

17 4. Attached as **Exhibit C** is the request in response to which the documents in
18 Exhibit B were provided.

19
20 EXECUTED this 19th day of February 2019, at Seattle, Washington.

21
22 
23 Fé Lopez

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25
26 DECLARATION OF FE LOPEZ
(No. 2:12-cv-01282-JLR) –1

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on February 20, 2019, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

DATED this 20th day of February, 2019.

s/ David A. Perez

DPerez@perkinscoie.com

CERTIFICATE OF SERVICE
(No. 2:12-cv-01282-JLR) -2

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EXHIBIT A

From: **Durkan, Jenny A. (USAWAW)** <Jenny.A.Durkan@usdoj.gov>

Date: Fri, Apr 4, 2014 at 8:24 AM

Subject: Re: OPA Auditor Special Review of SPD Disciplinary Practices - April 3, 2014

To: auditor <auditor@levco.com>

Cc: Merrick Bobb <MerrickBobb@parc.info>, Peter Ehrlichman <ehrichman.peter@dorsey.com>, Ron Ward <Ron@wardsmithlaw.com>, Marnie MacDiarmid <greemar2@aol.com>, Diaz, Michael (USAWAW)

<Michael.Diaz@usdoj.gov>, Lisa Daugaard <lisa.daugaard@defender.org>, Diane Narasaki <dianen@acrs.org>, Sarah K Morehead <Sarah.Morehead@seattle.gov>, Jean Boler <Jean.Boler@seattle.gov>, Hyeok Kim <Hyeok.Kim@seattle.gov>, Keefe, Kerry (USAWAW) <Kerry.Keefe@usdoj.gov>, JENNY DURKAN <jdurkan@mac.com>

Anne,

Thank you for sending this, and for taking the time to make thoughtful recommendations. Your input and assistance since we began our investigation three years ago has been important on many levels. Indeed, your work and that of previous auditors was very important in moving reform forward.

Without question, that work, various recent reviews by the City Council and by Chief Melekian and our own experience over the last three years only confirms the conclusions of the DOJ report. As we told the Court yesterday: the accountability system is in need of wholesale review and significant reform. Too many layers have been grafted on over the years by law and practice. It is almost unthinkable that so many experienced people can have so much confusion over how things work. It is also unacceptable. Both the officers and the public must have a system that is transparent, certain and just. The question is not simply how does the City improve what exists, but how does it create and insist on what is needed.

Moreover, as you know, in a healthy organization, discipline is only a part of any accountability system, and should perhaps be the smallest part. The SPD system has for too long cast too much solely through the lens of misconduct and discipline. The work we have done over the last many months works to shift the culture to emphasize organizational and individual improvement through thoughtful and candid review of both individual incidents and systemic practices. This conscious, continual improvement is one of the most important features of the Use of Force Review Board and other changes under the consent decree. It is also why the role of first line supervisors (sergeants) is critical. Mentoring, training, correction and improvement cannot be relegated solely to the academy or street skills classes. It must happen on every shift.

Of the many important roles the CPC plays in the reform process, the holistic review of the accountability process required by the consent decree and MOU is pivotal. That work and the changes it will help craft with City leadership will be critical to successful reform of SPD.

We know the CPC and all parts of the City leadership have received input from many quarters on these topics, and have begun active engagement of the community for its views. Your recommendations will undoubtedly be an important part of the robust and diverse dialogue ahead.

Again, thank you for your continued commitment as we move forward in implementing the agreements.

Best,

Jenny

EXHIBIT B

Overview for LRPC on SPOG TA

October 10, 2018

1.4 Guild President Pay. Guild will pay 22% of the cost, with remainder paid by City. Appropriate percentage will be reviewed annually.

3.1 Burden of Proof. Delete requirement that appeal of dishonesty requires clear and convincing evidence. The standard of review and burden of proof in labor arbitration will be consistent with established principles of labor arbitration.

3.3 Indefinite Suspensions. Expands the ability of the Chief to impose an indefinite suspension. In addition to felonies, the Chief can suspend an officer without pay pending investigation for a gross misdemeanor involving moral turpitude, or a sex or bias crime, where the allegation if true could lead to termination.

3.5F New Evidence Produced at the Due Process Hearing. The 180 Day Clock will be extended so that OPA has at least 60 days to investigate any material new evidence produced at the hearing.

3.5 H (old) Disciplinary Review Board. Deleted from the CBA.

3.6A Classifications. This section is intended to simplify the burden on OPA in the notice and classification process. The initial notice is now due in 5 business days rather than 5 calendar days. In addition, OPA is no longer required to specify each specific policy and rule the employee might have violated. Rather, OPA can reference the general potential policy violations, and provide a summary of the alleged misconduct.

3.6B Determining the 180 Day Start Date. See Tab A.

3.6B (2) Criminal Investigations. Makes it clear that the 180 Day Clock is tolled when a county prosecutor is reviewing a matter, and not just city, state or federal prosecutors, as in the current contract.

3.6C 180 Day Extension Requests. Expands the reasons why an extension request can be made by the city, and in the event of a denial requires the SPOG put the reason(s) for denial in writing.

3.6F (5) OPA Interviews. OIG can attend all OPA interviews.

3.6G Statute of Limitations. Extended from 3 to 4 years (note that 5 years is in the Ordinance). Parties agreed on a relatively broad interpretation of the "conceals acts of misconduct" exception. Type III use of force is not included on the list of exceptions.

3.6L Files Retention. Sustained files may be retained for the duration of employment plus six years. Not sustained files may be retained for three years plus the remainder of the current year.

3.7 Criminal Investigations. Clarifies that OPA may communicate with and provide coordination to those conducting criminal investigations about the status and progress of the investigation, but may not direct or influence the conduct of the criminal investigation. Current contract prohibits any coordination between OPA and the criminal investigators.

3.8 Frontline Investigations. For investigations conducted by the Chain of Command (limited to minor policy violations), this section establishes a process for the conduct of the investigation. The process makes clear that the more formal processes required for OPA investigations do not apply. If the matter is referred to OPA, then the more formal procedures kick in.

3.10 Mediation. This section seeks to enhance the use of mediation, and also make it clear that if an officer does not participate in good faith as determined by the Mediator, the matter will be returned to OPA for investigation and possible discipline. Under the current CBA the officer receives a supervisory referral, but can't be disciplined.

3.11 Rapid Adjudication. A new system allowing for the rapid adjudication of matters in which the officer agrees to waive a formal investigation and accept discipline. While either the officer or OPA may initiate the process, both the OPA and the officer must agree before the process is utilized.

3.13 EEO Investigations. This new section of the CBA recognizes the ability of the City to have EEO matters investigated under the oversight of SPD HR, and allows the City to utilize outside civilian investigators to conduct the investigation.

4.2C Written Reprimands. Deletes the requirement in the CBA that after three years an employee may request that written reprimands be removed from the personnel file.

7.4.4 Performance Based Transfers. Establishes a process allowing SPD to transfer employees for performance reasons after providing notice and an opportunity to improve.

7.13 Performance Appraisal Review. Revises the process for reviewing a performance appraisal. Most significantly, the final decision will be made by the SPD HR Director, and will no longer be determined by chance.

14. Grievance Procedure. This article substantially revises the grievance procedure, which will now be utilized for discipline cases rather than the DRB. The process for selecting arbitrators has been modified in order to better ensure the availability of independent arbitrators, and to avoid the ability to "game" the selection process.

21.5 Secondary Employment. The City can reopen the CBA for purposes of changes related to secondary employment. The Guild can bargain on any economic impacts arising out of the changes sought by the City.

21.6 Gender/Race Workforce Equity. The City can reopen the CBA at any time.

Appendix A - Body Worn Video. The Guild has agreed to implementation of BWV, and acceptance of the Department Policy. The language makes clear that the determination of which units wear BWV will be made by the Department. Employees assigned to wear BWV will receive a 2% premium.

Appendix D – Civilians in OPA. This appendix allows the City to civilianize two Sergeant investigator positions in OPA. The determination of when this occurs is within the discretion of the City.

Appendix E – Accountability Legislation. See Tab B.

Appendix F - MOU Incorporation. Pursuant to the Ordinance, this appendix incorporates the outstanding MOU's that will remain operative.

Appendix G – Miscellaneous.

Civilianization – The SPD HR Sergeant position may be civilianized by the City.

Janus Compliance – The parties will revise the CBA to bring it into compliance immediately following ratification.

OIG at Firearms Review Board. Ensures the OIG will have the same access and participation as the Monitor.

ULP's. The Guild will withdraw all pending Unfair Labor Practices, which includes their challenges to the Accountability Ordinance and to BWV, and an assertion that OPA skimmed bargaining unit work when changing the intake process.

Washington Paid Family and Medical Leave. Provides a process for bargaining once the State provides more information through rules/regulations.

Appendix H. Classification Report Examples. This section provides guidance in terms of the disclosure to the officer made by OPA in the Classification Report. It also recognizes that some complainants will wish to remain anonymous. To the extent issues arise in terms of the notice provided employees in matters involving an anonymous complainant, either party can re-open the CBA.

**LRPC Update on SPOG
Summary of SPOG Bargaining**

Dated: August 15, 2018

Not in any
electronic files

Civilianization - 2 OPA investigator positions

Civilianization - SPD HR Sergeant position

Re-opener- Approval of Gender/Race Workforce Equity Reopener Language

Body Worn Video. The Guild has agreed to implementation of BWV, and acceptance of the Department Policy. The language makes clear that the determination of which Units wear BWV will be made by the Department.

Guild President Pay: Guild will pay 22% of the cost, with remainder paid by City. Appropriate percentage can be reviewed annually.

Transfers – new section allowing Department to make performance-based transfers, after providing notice, and allowing the Department to make the final decision over where the officer will be transferred.

Disciplinary Review Board (DRB). The DRB has been removed from the contract, with all matters now resolved through the PSCSC or arbitration.

Arbitration. The parties have agreed upon a procedure for selection of arbitrators that will avoid concerns about Guild gamesmanship, and also ensure the timely selection of arbitrators.

Performance Appraisal Review – removal of existing system that resolves disputes concerning performance reviews by lot. New system allows final decision to be made by SPD HR Director.

Secondary Employment. City can reopen the CBA for purposes of changes related to secondary employment at its discretion.

Public Safety Civil Service Commission. The Guild will participate in negotiations with the other public safety unions concerning changes to the PSCSC.

ULP's. Withdrawal of all pending Unfair Labor Practices

LRPC UPDATE on SPOG AND ACCOUTABILITY

Status Report – August 15, 2018

Open Issues

3.29.130 (I) Office of Police Accountability – Classification and investigation timelines

Places an obligation on any named employee or his/her union that becomes aware of any witness or evidence that is material to an investigation, to disclose it to OPA. Information not disclosed prior to a due process hearing, grievance, or appeal shall not be allowed into the record after the OPA investigation has concluded if it was known to the named employee or the named employee's bargaining representative during the OPA investigation, and if OPA offered the employee an opportunity to discuss any additional information and suggest any additional witnesses during the course of the employee's OPA interview.

- Sometimes referred to the “no-gotcha” provision of the Ordinance.
- Goal is to avoid having an employee or the Guild with-hold exculpatory evidence from OPA and the Chief, and then surprise the City with it at arbitration or the PSCSC.
- Status: still open.

3.29.300 Community Police Commission established – Functions and authority

E. Identify and advocate for reforms to state laws that will enhance public trust and confidence in policing and the criminal justice system. Such advocacy may include, but is not limited to, reforms related to the referral of certain criminal cases to independent prosecutorial authorities, officer de-certification, **pension benefits for employees who do not separate from SPD “in good standing,”** and the standards for arbitrators to override termination decisions by the Chief.

- The Guild wants all of the examples struck. Since these are merely examples of advocacy, there is no substantive reason to insist on retaining this language; rather the issue is primarily one of optics.
- The best option is to talk with CPC and work out mutually acceptable language that makes it clear the City is not in any way seeking to restrict or impede the ability of the CPC to engage in advocacy, and with which the CPC is comfortable.
- Status: Still open.

3.6 G. – Statute of Limitations. City wants to expand the limitations period to five years from three years, and expand the exceptions (for which there is no limitation).

- Given the significant process improvements in the investigation of use of force, perhaps keep exceptions as is and extend the current 3 year limitation to 5 years.
- Status: TTA on 4 years, still working on the exceptions list.
- Open issue: Dishonesty, or where the named employee conceals acts of misconduct

Matters Resolved Since Last LRPC Meeting

3.29.420 A(7)(c). Disciplinary, grievance, and appeals policies and processes

Oral reprimands, written reprimands, "sustained" findings that are not accompanied by formal disciplinary measures, and alleged procedural violations may be processed through grievance processes established by the City Personnel Rules or by Collective Bargaining Agreements, but no grievance procedure may result in any alteration of the discipline imposed by the Chief. Such grievances are not subject to arbitration and may not be appealed to the PSCSC or any other forum.

- See above on written warnings. It is also not clear how the prohibition on allowing the grievance procedure to alter discipline imposed by the Chief will work in practice. What happens if the Guild raises issues causing the City HR/LR and the CAO to agree that the City will not prevail in arbitration/Civil Service?
- TTA allowing changes to be made in the Chief's decision as part of the grievance process, but recognizing the right of the City to establish internal review processes prior to reaching agreement.

Secondary Employment Re-opener – the Guild wanted to open “wages and benefits” if the City re-opens on secondary employment.

- Stick with City proposal that Guild can bargain any economic impacts resulting from a change in secondary employment. (TTA)

Civilianization in OPA – City seeks 3 civilian investigators in OPA, Guild will accept 2 civilian investigators and also allow civilianization of the HR Sgt. position in SPD Human Resources.

- Go with 2 OPA investigators and the HR Sgt. (TTA)

3.3 Indefinite Suspensions – Guild is OK with unpaid indefinite suspensions for gross misdemeanors involving moral turpitude, or a sex or bias crime, with the exception of when the underlying charge is filed by the City.

- **Potential high visibility issue. Even though it does not arise very often, continue to pursue. TTA on language allowing City to suspend without pay based on specified gross misdemeanor charges filed by the City, with caveat that if drop the charges or found not guilty back-pay is reinstated with statutory interest.**

3.6 B (3) Tolling of the 180-Day Clock when a matter is being criminally investigated – Guild is fine with tolling when another jurisdiction investigates, but wants the clock running if Seattle investigates, or sends the investigation to another jurisdiction for investigation.

- **Continue to pursue. TTA on language allowing City to request extension of 180 Day Clock when City investigates criminal matters. Guild may not unreasonably deny such requests. In cases when another agency conducts the investigation, the clock is tolled pending that investigation.**

3.29.420 A(7)(b) Disciplinary, grievance, and appeals policies and processes

The PSCSC shall be composed of three Commissioners, none of whom shall be current City employees or individuals employed by SPD within the past ten years, who are selected and qualified in accordance with subsection 4.08.040.A

- **Given that the City has agreed to arbitration, is this change still important? One alternative is make the Ordinance change providing that a Hearing Examiner will conduct the hearing (which the Guild has expressed opposition to, but allow the police and fire unions to continue making one appointment.**
- **TTA on language providing that Guild agrees to bargain with other public safety unions on the PSCSC changes.**

LRPC UPDATE on SPOG NEGOTIATIONS

Final TA on Accountability Issues Discussed at the August 15, 2018 LRPC Meeting

Secondary Employment Re-opener – the Guild sought to open “wages and benefits” if the City re-opens on secondary employment.

- Only economic impacts resulting from a change in secondary employment can be re-opened by the Guild.

Civilianization in OPA

- The City attains the right to civilianize 2 OPA investigator positions now performed by SPOG Sergeants, and also the work performed by the SPD HR Sgt.
- The decision of when these changes will be made is within the discretion of the City.

3.3 Indefinite Suspensions - On indefinite suspensions used for investigative purposes which do not result in termination of employment or reduction in rank, the resultant punishment shall not exceed thirty (30) days including the investigative time incorporated within the indefinite suspension. However, if an employee has been charged with the commission of a felony or a gross misdemeanor involving either moral turpitude, or a sex or bias crime, where the allegation if true could lead to termination, the Employer may indefinitely suspend that employee beyond thirty (30) days as long as the length of such suspension is in accord with all applicable Public Safety Civil Service Rules. In the event the gross misdemeanor charges are filed by the City, and are subsequently dropped or the employee is acquitted, the backpay withheld from the employee shall be repaid, with statutory interest. The Guild will be notified when the Department intends to indefinitely suspend an employee. The Guild has the right to request a meeting with the Chief to discuss the suspension. The meeting will occur within fifteen (15) days of the request. If the charges are dropped or lessened to a charge that does not meet the qualifications above, there is a plea or verdict to a lesser charge that does not meet the qualifications above, or in the case of a hung jury where charges are not refiled, the employee shall be immediately returned to paid status. An employee covered by this Agreement shall not suffer any loss of wages or benefits while on indefinite suspension if a determination of other than sustained: exonerated, unfounded, or not sustained is made by the Chief of Police. In those cases where an employee covered by this Agreement appeals the disciplinary action of the Chief of Police, the Chief of Police shall abide by the decision resulting from an appeal as provided by law with regard to back pay or lost benefits.

Commencement of the 180 Day Clock - the TA substantially modifies Section 3.6B, which determines when the 180 Day Clock Starts:

- B. Except in cases where the employee is physically or medically unavailable to participate in the internal investigation, no discipline may result from the investigation if the investigation of the complaint is not completed within one-hundred eighty (180) days after the 180 day start date (the "180 Start Date") receipt of the complaint by the OPA or by a Department sworn supervisor, or (if submitted to the prosecutor within one hundred eighty (180) days) thirty (30) days after receipt of a decline notice from a prosecuting authority or a verdict in criminal trial, whichever is later. The 180 Start Date begins on the earliest of the following:
- i) Receipt/initiation of a complaint by the OPA;
 - ii) Receipt/initiation of a formal complaint by a sworn supervisor alleging facts that, if true, could without more constitute a serious act of misconduct violation, as long as the supervisor forwards the matter to OPA within forty-eight (48) hours of receipt. For cases of less than serious acts of misconduct, the 180 Start Date will begin with the receipt of information where the supervisor takes documented action to handle the complaint (for example a documentation in the performance appraisal system);
 - iii) For incidents submitted to the Chain of Command in Blue Team (or its successor), fourteen (14) days after the date on which the initial supervisor submits the incident for review to the Chain of Command;
 - iv) OPA personnel present at the scene of an incident; or
 - v) If OIG is present at the scene of an incident at which OPA is not present, and if OIG subsequently files a complaint growing out of the incident, the date of the incident.

Provided, however, in the case of a criminal conviction, nothing shall prevent the Department from taking appropriate disciplinary action within forty-five (45) days, and on the basis of, the judicial acceptance of a guilty plea (or judicial equivalent such as nolo contendere) or sentencing for a criminal conviction.

For purposes of (iii) above, if following a Blue Team entry, the Chain of Command concludes that no misconduct occurred, and then material new evidence (including video) is provided at a later date that suggests serious misconduct did occur, then a new 180 Start Date is triggered on the date that the new material evidence of serious misconduct is provided.

Re-calculation of the 180 Day Clock. The TA also created a new Section 3.6D that allows for the “re-calculation” of the 180 Day Clock in certain circumstances:

D. 180 Start Date Re-calculation

When a community member complains about an incident, the OPA will generally investigate even in situations where the 180 day period for investigation may have expired. In the event an incident that was or should have been determined to be a Type II Use of Force, Bias, or Pursuit is entered into Blue Team, reviewed by the Chain of Command, the Chain of Command does not forward the incident to OPA, and a community member later complains, the OPA may initiate the following process to determine whether a re-calculation of the 180 Start Date is appropriate.

1. If OPA's investigation results in an OPA recommended finding that: (i) serious misconduct occurred, and that (ii) the serious misconduct was or should have been determined by the Chain of Command to be a violation of the Type II Use of Force, Bias, or Pursuit policy (or policies), OPA may request in writing that the 180 Start Date be recalculated to commence effective on the day of the community member's complaint. Such requests may not be unreasonably denied by the Guild. In the event the Guild denies the re-calculation, the Guild shall explain in writing the reason for the denial, and the matter will be resolved by the Chief, as provided below. If OPA recommends a finding that the serious misconduct described above occurred, it will forward its recommendations to the Chief. After reviewing OPA's recommendations, and offering a due process hearing where required, the Chief will determine in writing whether the matter was appropriate for re-calculation, and if so, whether the findings of OPA should be sustained and discipline imposed. The Chief's decision on re-calculation as well as any discipline issued are subject to arbitration.
2. In the event a Bias or Pursuit incident entered into Blue Team is recalculated pursuant to (D 1) above, and there was a Type I Use of Force in the same incident that was serious misconduct, which was not previously reported to OPA, - then the recalculated 180 Start Date

from the Bias/Pursuit incident will be applied to the Type I Use of Force.

Changes Related to Tolling the 180-Day Clock

3.6B (2) In addition to those circumstances defined in subsection B.1, above, the one-hundred eighty (180) day time period will be suspended when a complaint involving alleged criminal conduct is being reviewed by a prosecuting authority or is being prosecuted at the city, state, county, or federal level or if the alleged conduct occurred in another jurisdiction and is being criminally investigated or prosecuted in that jurisdiction.

3.6C 180 Day Extension Requests

1. The Department may request and the Guild will not unreasonably deny an extension of: (1) the thirty (30) day period for furnishing the employee a classification report, if the complaint was not referred by the sworn supervisor to his/her Cehain of Cecommand or the OPA in a timely manner; (2) the one-hundred eighty (180) day time restriction if the Department has made the request before the one-hundred eighty (180) day time period has expired; has exercised due diligence in conducting the investigation of the complaint; and is unable to complete the investigation due to one of the following reasons: i) the unavailability of witnesses/named employee; ii) the unavailability of a Guild representative; iii) the OPA Director position becomes vacant due to unforeseen exigent circumstances; iv) when a complex criminal investigation conducted by the City takes an unusually long period of time to complete, and the City has exercised due diligence during the investigation; or v) other reasons beyond the control of the Department. A request for an extension due to the unavailability of witnesses must be supported by a showing by the Department that the witnesses are expected to become available within a reasonable period of time. The City's request for an extension will be in writing. The Guild will respond to the request in writing, providing the basis for denial, and recognizing that the determination will be based on the information provided to it.
2. The Department may request an extension for reasons other than the reasons listed above; however, any denial shall not be subject to subsection C1 above. Any approval or denial of a request for an extension other than the reasons listed in C1 shall be non-precedential.

3. Nothing in this section prohibits the OPA from requesting more than one extension during the course of an investigation.
4. In determining whether an extension request under C1 was appropriately denied, the factors to be considered are the good faith of the parties, the facts and circumstances surrounding the request, and the information provided to the Guild by the City.

3.6 G. – Statute of Limitations. G. Timing of Investigations — No disciplinary action will result from a complaint of misconduct where the complaint is made to the Internal Investigations OPA Section more than threefour (4) years after the date of the incident which gave rise to the complaint, except:

1. In cases of criminal allegations, or
2. where the named employee conceals acts of misconduct, or
3. for a period of thirty (30) days following a final adverse disposition in civil litigation alleging intentional misconduct by an officer.

NOTE: The parties agree that the phrase “where the named employee conceals acts of misconduct” includes but is not limited to misconduct where an employee fraudulently completes a timesheet because such act conceals the actual amount of time that was worked.”

3.29.130 (I) Office of Police Accountability – Classification and investigation timelines

Places an obligation on any named employee or his/her union that becomes aware of any witness or evidence that is material to an investigation, to disclose it to OPA. Information not disclosed prior to a due process hearing, grievance, or appeal shall not be allowed into the record after the OPA investigation has concluded if it was known to the named employee or the named employee’s bargaining representative during the OPA investigation, and if OPA offered the employee an opportunity to discuss any additional information and suggest any additional witnesses during the course of the employee’s OPA interview.

Resolution: The City agrees that this section will not be implemented during the term of this Agreement (including any holdover period). Instead, the parties will implement the following provisions. This agreement does not in any way change or impact the application of any evidentiary standards applicable in grievance arbitration. In the interest of the Chief receiving relevant information prior to making a disciplinary decision, the parties have agreed that in the event new material evidence is presented to the Chief at a due process hearing, the Chief may return the matter to OPA, and the 180-day period will be extended to allow the OPA to investigate the new evidence and provide it to the Chief (see Article 3.5F) of the Agreement). Additionally, in order to minimize the likelihood that either party is unduly surprised at an appeal hearing, the parties agree that fifteen days prior to a discipline appeal hearing, each party will disclose any experts not previously used in the due process hearing or the grievance procedure.

3.29.300 Community Police Commission established – Functions and authority

E. Identify and advocate for reforms to state laws that will enhance public trust and confidence in policing and the criminal justice system. Such advocacy may include, but is not limited to, reforms related to the referral of certain criminal cases to independent prosecutorial authorities, officer de-certification, pension benefits for employees who do not separate from SPD “in good standing,” and the standards for arbitrators to override termination decisions by the Chief.

Resolution: While the Guild recognizes the right of the CPC to engage in advocacy, the Guild is concerned that inclusion of the examples in this section of the Ordinance could be perceived as support by the Guild for these examples. Recognizing the need to get the Ordinance in place, the City agrees it will remove the second sentence from the Ordinance. In so doing, the City reaffirms its support of CPC’s authority to identify and advocate for reforms to state laws that will enhance public trust and confidence in policing and the criminal justice system, as explicitly provided for in the first sentence of this section of the Ordinance, which will remain in place as written.

The Guild and the City further confirm that nothing in their agreement on this issue is intended to restrict or limit CPC advocacy.

3.29.420 A(7)(c). Disciplinary, grievance, and appeals policies and processes

Oral reprimands, written reprimands, "sustained" findings that are not accompanied by formal disciplinary measures, and alleged procedural violations may be processed through grievance processes established by the City Personnel Rules or by Collective Bargaining Agreements, but no grievance procedure may result in any alteration of the discipline imposed by the Chief. Such grievances are not subject to arbitration and may not be appealed to the PSCSC or any other forum.

Resolution: The City agrees that this section of the Ordinance shall not change the scope of matters that are subject to the grievance procedure and arbitration under the Agreement and to challenge/hearings under the PSCSC. In addition, the City confirms that operation of the grievance procedure and PSCSC can result in the alteration of discipline imposed by the Chief. Both parties recognize the right of the other party to utilize internal review processes prior to entering into a settlement of a grievance or a PSCSC appeal.

3.29.420 A(7)(b) Disciplinary, grievance, and appeals policies and processes

The PSCSC shall be composed of three Commissioners, none of whom shall be current City employees or individuals employed by SPD within the past ten years, who are selected and qualified in accordance with subsection 4.08.040.A

- The Guild agrees to bargain with the three other public safety unions on the PSCSC changes.
- In the event the other public safety unions refuse to engage in joint bargaining, the City can re-open the Agreement with SPOG on changes to the PSCSC.

EXHIBIT C

Seattle
Community
Police Commission

Our city. Our safety.
Our police. Better together.

December 6, 2018

VIA EMAIL

Dear Council President Harrell,

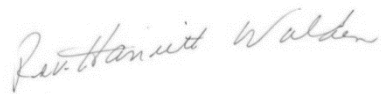
As you know, the Community Police Commission, as well as other parties, is in ongoing dialogue with Judge Robart with respect to the impact of the SPOG and SPMA collective bargaining agreements on various Seattle ordinances and provisions related to police accountability. In connection with that work, the CPC requests that the City Council and the Labor Relations Policy Committee produce the records specified below, and ask that these be expedited:

1. All bargaining guidance and parameters issued to City negotiators involved in bargaining with SPOG under Executive Order 01-14 (City Labor Negotiations and Standard Operating Procedure) from the Executive Order's signing in September 2014 until the present;
2. All documents describing the responsibilities of City negotiators or members of the LRPC generally or specifically in connection with SPOG negotiations;
3. All documents relating to formal or informal decisions made by the LRPC and background materials provided to LRPC members in connection with decision-making;
4. All drafts of the TA (including earlier drafts of the document) provided to the LRPC or descriptions of such drafts provided to the LRPC, indicating the date on which such documents were provided and to whom; and
5. All documents analyzing variations between the 2017 accountability ordinance and any draft of the TA.

We make these requests under SMC 3.29.330(D) ("Without the necessity of making a public disclosure request, CPC may request and shall timely receive from other City departments and offices, including SPD, information relevant to its duties under this Chapter 3.29 that would be disclosed if requested under the Public Records Act"), and pursuant to our understanding that, after a tentative agreement (TA) is reached, bargaining documents become public. Based on the resolution that Council adopted in connection with the TA, and based on the Federal Court proceeding and the Court's Order, the TA's impact on the 2017 Accountability Ordinance, as well as other City law (EEO provisions and measures pursuant to executive order to rectify secondary employment abuses), will be discussed in coming weeks with Judge Robart. Therefore, time is of the essence, and we respectfully request that the materials be provided as soon as possible.

We note that we requested certain LRPC materials from Ian Warner, counsel for Mayor Durkan, on October 23. It is our current understanding that the materials are in the custody and control of the LRPC, however.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission



Isaac Ruiz, Co-Chair
Community Police Commission

Cc:

Mayor Jenny Durkan
Ian Warner, General Counsel to the Mayor
Councilmember Sally Bagshaw, District 7
Councilmember Lorena González, District 9
Councilmember Lisa Herbold, District 1
Councilmember Rob Johnson, District 4
Councilmember Debora Juarez, District 5
Councilmember Teresa Mosqueda, District 8
Councilmember Mike O'Brien, District 6
Councilmember Kshama Sawant, District 3
City Budget Office Director Ben Noble
SDHR Director (Acting) Susan McNab
Seattle Community Police Commission